1941 **K** File No. Adm. Agency/41

Legal DEPARTMENT

C BRANCH

Subject:– Agency Elections –

[redacted] tment of –

[redacted] Provincial Governments.

27/E")

File No. Adm. Agency/41

Std. Sectt. Slip 24 B c.

519-C.

C O N T E N T S.

Legal Department Adm. Agency of 1941.

1941.

Sr. No.	R.I./O. No.	Subject	pages.
	Agency Function.	Entrustment of — to Provincial Governments.	
	P.& S.D. Endo. 1809/34-A 31-10-1941.	Agency functions- contribution from Central Revenues for the work done in the Bombay Secretariat.	1 . 37.
	R.I. 10203 6.11.41.		

S.C. 4C. 25/5

2/6.

Below Copies of - -

(1) letter from the Government of India, Finance Department, No. D. 3590-E/ 41, dated the 1st July 1941, and its enclosures ;

(2) Kit Political and Service s Department office note dated the 1st October 1941 ;

(3) note by Deputy Secretary, Political and Services Department, dated the 9th October 1941.

No. 1809/34-A
Political and Services Department.
Bombay Castle, 31st October 1941.

Forwarded to all Departments of the Secretariat (except the separate Department) with reference to this Government, Political and Services Department letter to the Government of India Home Department, No. 1809-34-A, dated the 5th/6th March 1940, copies of which were forwarded to the Departments with Government Memorandum, Political and Services Department. No. 1809/34-A , dated the 28th March 1940

2. The Departments are requested -

(1) to examine the suggestions of the Government of India with which they are respectively concerned ;

(2) to state whether they should be accepted or not and, whether in each case an agency exists or not, stating reasons; and

(3) whether the consolidated statement appended to this Government. Political and Services Department, Letter to the Government of India, Home Department, No. 1809/34-A , dated th 5th March 1940 should be modified and if so, what notifications should be made.

The items accepted by the Government of India need not be dealt with, while the items mentioned in the Government of Indis's letter should be dealt with in the order given in that letter.

S.C.
4 C. 22/5

3 It will simplify disposal of this case, if the information is su plied by the epartments in the form appended to this Memora um.

By order of the overnor of Bombay.

Sd/

For chief Secretary to the overnor of Bombay

Political and Services Department.

S.C.
4 C. 22/5

No. D. 3598-F/41.
Government of India.
FINANCE DEPARTMENT.

New Delhi, the 1st July 1941.

From

S.A.Hasnie, Esquire,
Under Secretary to the Government of India.

To

The Chief Secretary to the Government of Bombay.
Political and Services Department.

Subject .- Agency functions - Contribution from Central Revenue for the work done in the Bombay Secretaria.

Sir,

I am directed to refer to your letter No. 1809/34-A, dated the 5/16th March 1940, on thesubject noted aneve, and to state that the Defence Department and His Excellency the Crown Representative will address the Government of Bombay direct in so far as the claim for payment for agency functions pertains to the,. The present reference is in respect of t e claim of Rs. 42,250 made by the Bombay Gove nment for agency functions performed in the Bombay Secretariat on behalf of the various Civil Departments of the Governor of India.

2. The Consolidated statement appended to the letter from the Government of Bombay referred to above, has been examined and some modifications have been found to be necessary. I enclose a statement showing the proposed amendment and it is requested that the concurrence or comments of the Government of Bombay thereon may kindly be intimated to this Department in due course.

3. With regard to the amount claimed, I am to point out that although in the consolidated statement, as x many as 57 items are included as pertaining to the various Departments of the Central Government, the claim of Rs. 42,250 in fact covers only sixteen of them. Out of the remaining items, four concern His Excellency the Crown Representative and one, t he Defence Department. As for the rest, either there is no entrustment of agency functions, or the Provincial Government are willing willing to discharge them free of cost, or the Provincial Government are being allowed to retain, in lieus of the agency charges, xx the fees that should in law form part of central revenues, or else some separate arrangements for payment exist either in the form of fixed contribution, or through the stipulation that the Provincial Government will recover the actual cost incurred or according to some other mutually agreed formula. The enclosed statement gives the particulars with regard to the39 items mentioned above.

4. The sixteen items for which an amount of Rs. 42,250 is claimed wouldseem to be :

Home Department	Statutory - 1,2,8,9,11,13
Home Department	Non-Statutory - 19,20,21.
Department of Education, Health and Lands.	Statutory - 3.
Department of Education Health and Lands.	Non-statutory - 8
Department of Communications	Non-Statutory - 2.
Finance Department	Statutory - 1.
External Affairs Department.	Statutory - 1,2
External Affairs Department.	Non-Statutory - 3

S.C. 2

It appears to the Government of India that for these, the amount claimed is excessive, particularly in view of fact that some of these functions are being discharged by other Provincial Governments free of cost and that the work pertaining to some others must be negligible.

5. I am to request that the Bombay Government may kindly revise their claim in the light of what is stated above.

I have the honour to be,
Sir,
Your most obedient servant,

Sd/- S.A.Hasnie,

Under Secretary to the Government of India.

S.C.
4 Copies 23/5

Political and Services Department.
D Branch.

Two letters from the Government of India in the Finance Department are under submission. The second letter dated the 9th September being in continuation of the first which is a reply to our letter to their Home Department, No. 1809/34-A, dated the 15/16th March 1940. regarding the agency functions and the contribution payable from Central Revenuesfor the work done at the Bombay Secretariat in relation to to se of the agency functions which are being performed by the Provincial Government subject to agreement as to cost.

2. With our letter of March 1940, a consolidated statement of the agency functions performed by the Provincial Government on behalf of the different Departments of the Central Government under section 124 of the Government of India Act. 1935, and by the officers of the Provincial Government on behalf of his Excellency the Crown Representative under section 287 of the Act, was forwarded. The statement includes items which were classified into -

His Excellency the Crown Representative's Department.

(a) those pertaining to the Political Department.

(b) those pertaining to the Defence Department.

(c) those pertaining to other Departments of the Central Government.

and our claim for cost was also based on that classification. The Government of India in their letters under submission deal with the agency functions pertaining to their Departments other than the Defence and Political Departments and for the reasonsgiven in paragraph 4 of their main (i.e. the first) letter ask that our claim in respect of these items may be revised. They have also proposed at the same time certain amendments in the consolidated statement, which, however , do not affect the question of cost.

3. The amendments proposed by the Government of India are included in the statement at pages 5-9 ante. Before carrying

carryint out those amendments in our consolidated statement, the Departments concerned may be supplied with a copy of the Government of India's statement and they may be requested to offer remarks, if any, with reference to the amendments with which they are respectively concerned. The following preliminary observations have been made with reference to the amendments proposed by the Government o India.

(1) Item 9 in the consolidated statement under the Home Department of the Government Of India. The amendments proposed will have to be carried out being in accordance with the statutory provisions indicated. Political and Services Department and Central Department are concerned with the enactments mentioned. The remarks under the heading "particulars" do not require to be incerporated in the remarks column of our consolidated statement.

The statement appended to our letter No. 1809/34-A, dated the 16th March 1940, need not be corrected. It represents our claim as we understand it. But since it is to be an agreement, there must be give and take and we may prepare a revised statement embodying the modifications which are accepted by us. This will, when finally settled form thebasis of our agreement.

Id/-V.H.V.
9-10

(2) Item 10 ibid. The necessary changes in the consolid ted statement should be made in consultation with the Passport Branch which shouldput up copies of the Government of India's notification in the Home Department, No. 51/12/36, dated the 10th January 1940 andof their Circular letter of the samenumber and date, so that the implications of the proposed changes may be appreciated.

Do we accept Government of India's statement that there is no agency except under section 17 of the Census Act. Can there be no statutory agency? * "Census" is an exclusively federal subject.

Id/- V H.V.
9-10

(3) Item 3 under the Department of Education, Health and Lands. The amendments shouldbe carried out being in accordance with the statutory provisions of the Indian Pilgrim Ships Rules 1933 and the Port Haj Committee Rules, 1933, The Political and Services Department (E Branch) is concerned.

It may be stated here that the agency in respect of items I and 2 under the Department of Education, Health and Lands (Emigration and Repatriation) which was for a period of three years i.e. upto 31st March 1941, has been extended

ox onied by one more year upto 31st March 1942.

(4) Item 5 ibid: The amendments proposed should be carried out being in accordance with the statutory provisions of the India Ports Act, 1908. General Department is concerned. That Department will have to check the reference quoted by the Government of India, Department of Education, Health and Lands letter No. F. 5-2/39-E, dated the 11th August 1939.

(5) Item 6 ibid : This item will have to be omitted, as the Bombay University has been made a Provincial subject. Educational Department is concerned.

(6) Item 7 ibid: This item should be emitted, as obviously there is no agency function involved. Political and Services Department which is the Department concerned enticipated this development as will be seen from the remarks against this x item in our consolidated, statement.

(7) Item 8 ibid : This should be amended for the reasons given by the Government of India. Political and Services Department and Revenue Department are concerned. It seems that items 7 and 8 in the consolidated statement under the Department of Labour will have to be shown in a modified form under the Department of Education, Health and Lands after consulting the Public Works Department of the Government - vide No. (ii) below.

(8) Item 1 under the Department of Labour. There being no agency function under the Indian Copyright Act, reference to it in column 4 of the consolidated statement shouldbe mxxi emitted. Political and Services Department (B Branch) is concerned.

As regards the agency under "the Indian Patents and Designs Act" and the Merchandise Marks Act", reference to these enactment should also be emitted. Political and Services Department (B Branch) is concerned.

In effect, itmm 1 under the Department of Labour shouldbe emitted entirely.

(9) Item 5 ibid: As the Defence Department is concerned

with the subject "Ecclesiastical Affairs", we are asked to show this item under the Defence Department instead of under the Department of Labour. Political and Services Department ix (B and C Branches) is concerned. The necessary charge of Department will be made subject to the question of cost seeing that the Defence Department does not propose to make any payment in relation to most of the Defence items and it is proposed not to make any claim against that Department in respect of Defence items until after the termination of the war (vide the office note of to-day in the linked case). As the subject "Ecclesiastical Affairs" is not a Defence item as such, the claim for it will remain included inthe clai. for cost in m respect of non-Defence and non-Crown items generally. (vide paragraphs 5-8 below).

(10) Item 6 ibid. The proposed change of Department may be mk effected that is to say that this item may be shown under the Department of Communications instead of under the Depart. ment of Labour. Revenue Department is concerned and may be requested to confirm.

(11) items 7 and8 ibid : In view of the position explained by the Government of India, these two items may be omitted under the Department of Labour mk and shown under the Department by the of Education, Health and Lands in such form as may be suggested by the Public Works Department which is the Department concerned. That Department may be requested to confirm the presumption that items 7 and8 should be omitted under the Department of Labour and to propose a new revised entry to be made under the Department of Education, health andLands, bearing in mind the correspondence referred to viz. that Departments letters to the Government of India No. 7397/27-E, dated the 6th November 1939 and 20th February 1940.

(12) Item 9 ibid : This item is said to concern the Finance Department of the Central Government and not the Department of Labour. This charge may be made in consultation with Revenue Department which is concerned on this side . It seems the

the Government of India propose to deal with the question of the terms and conditions separately. The receipt of the promised seperate communication wi l be awaited. It will not affect the question of cost dealt with in paragraphs 5 to 8 below.

(13) Item 3 under the Commerce Department. This item will have to be omitted for the reasons given viz. that the item falls under t e concurrent list in the Seventh Schedule to the Government of India Act, 1935, and that, therefore, the executive authority of the Procincial Government extends to the administration of the subject. Political and Services Department (B Branch) is concerned.

(14) Item 4 ibid: In view of the Government of india's second letter of 9th September, this amendment shouldbe ignored. Status quo nate.

(15) Item 1 under the Department of Communications. The Government of India have, it seems, entrusted the agency on this condition that actual charges should be recovered from the Posts and Telegraphs Department whenever a dispute is set led (by the Provincial Government or its Officers) This condition may be incorporated in the remarks column against this item in the consolidated statement, quoting the Government of India's letter under submission as the authority for the arrangments.

(16) The following should be added as a new item under the Department of Communications in the consolidated statement :

Column 1. 2

Column 2. Functions of the Central Government under the Bombay Landing and Wharfage Fees Act, 1882, in relation to the Port of Bombay.

Column 3. ---

Column 4. The Bombay Landing and Wharfage Fees Act, 1882.

Column 5. Notification of the Government of India, Department of Communications, No. 6-P(8)/37, dated the 21st September 1938.

Column 6. The Provincial Government has accepted the agency and agreed not to claim any contribution from the Central Government vide the Government of Bombay, Revenue ~~Government~~ Department letter No. 8255-G/28, dated the 21st July 1938.

This a dition should be made after Revenue Department has confirmed it, having regard to the correspondence quoted in the Government of India's letter under submission.

(17) Item 1 under the Railway Department. This item should be omitted for the reason given viz. that this is not an agency function at all. The public Works Department which is he Department concerned shouldnote that the Government of India have agreed to the reciprocal ratio of 12½ %.

(18) Item 1 under the Legislative Department. The proposed amendment should be carried out after the Legal Department has confirmed it, having reward to the correspondence quoted viz. that Department's letter to the Government of India, No. 4351, dated the 2nd May 1941.

As already stated, none of the above amendments affects the question of the agency cost for the work done at the Bombay Secretariat, dealt with herein below.

4. As already stated, for the purpose of the agency cost, items have been classified as shown in paragraph 2 above, and our claim of Rs. 60,000 (in round) is accordingly made up of

	(a) Rs. 12,700	Defence item
(b) Rs.	(b) Rs. 5,000	Items pertaining to the Political Department (agency under section 287).
	(c) Rs. 42,250	(plus Rs. 50 for rounding) for items pertaining to the other Departments of the Central Government.

In their present le ter, the Government of India have stated that the Defence Department and the Pol'tical Department will address us separa ely in regard to (a) and (b) above. We have in fact received a commonication from the Defence Depar ment already. (linked case). No such communication from the Political Department has so far been received, though in relation to the budget for 1942-43, Secretary to His Excellency the Crown Representative has asked us to cut our estimate of Rs. 5000 under 33-Payments to Crown Representative as a measure of economy necessitated by the expenditure resulting from the war. As the contribution of Rs. 5000 pay

payable

payable to us b His Excellency the Crown Representative is a fixed payment and no communication dealing with that payment on its own merits has been received from the Political Department the view t ken tr that our estimate of Rs. 5000 is not susceptible of any reducti n. Item (c) above, therefore, exclusively forms the subject of this letter from the Government of India in the Finance Department and should be dealt with without reference to items (a) and (b).

5. The Government of India are of the opinionthat our claim of Rs. 42,250 (plus Rs. 50 for rounding) is excessive, beca (1) it pertains to on y a few (according to the Government of India 16 items) of theitems included in the consolidated statement, (ii) some of these items are not charged for by other Provincial Governments and (iii) the work in relation to some others (of the 16 items) must be negligible. The Government of India have not shown which items are not charged for by the other Provincial Governments or which of them in particular involve negligible volume of work. It is not possible to assess the value of two of the three reasons advanced by the Government of India. It may be stated however, that the argument that the ord other Provincial Governments discharge some agency functions free of any cost is not relevant. Under section124 (1) of the Government of India Act, 1935, entrustment of agency functions is subject to the consent of the Provincial Government, which means that each Provincial Government is free to negotiate its terms in the light of the conditions prevailing locality. As for the other argument some of theitems included in our claim involve negligible work, we have made no secret of that fact, but have made it clear at the sametime that while single terms can be neglected, their cumulative value, in terms of total volume of work and the cost of the Secretariat Establishment required to do it, cannot be disregarded, if the Provincial Government were to claim payment for the servi es beingrendered by it as the Agent of the ~~Central~~ Central Government under Section 124(1) of the

Government of India viz, that our claim of Rs. 42,250 is excessive, as it relate o 16 items only, we made it clear to the Government of India that it was not possible to assess the cost of work involved in each charges le item seperately. It was shown what work was included inthe pre-Reforms contribution of Rs. 54,000 and what remaingd to be included in the proposed contribution of Rs. 42,250. Statement "A" appended to our letter of March 1940 showed the position at a glance. Apparently, the Government of India have ot considered this a peat of our case at all. If they had, they might not have asked us to hase the claim on the work involved in individual item of the agency on their behalf.

Excluding Rs. 5000/- for agency under Section 289 in relation to Indian States.

6. In paragraph 4 of their letter the Government of India have enlisted the 16itemswhich, it appears to them, have been taken into account in fixin our claim at Rs. 42,250. The Government of India lieu falls short of a few important items whoih we have also taken into account. The following is the completer list of such i ems :-

No. in the consolidated statement.	Description of the item.	Department of the Government of India concerned.	Department of the Provincial Government concered
1	2.	3.	4.
8	Functions under the Negotiable Instruments Act (Holidays).	Home Department.	Political and Service Department.
9	Census (in so far as the work in the Secretariat is concerned	-do-	-do-
11 and 12	Foreigners; Their registration under the Act of 1939; admission into and deportation from British India.	-do-	-do-
13	Naturalisation.	-do-	-do-
19	Recovery of repatriationcharges from persons repatriated from abroad.	-do-	-do-
20	Grant of vises to foreigners visiting India.	-do-	-do-
21	Grant of no-objection certificates to foreign missionaries in India.	-do-	-do-

1.	2.	3.	4.
and 2	Functions under the Immigration Act and Emigration Rules	Department of Education, Health and Lands.	Political and Services Department.
3	Pilgrimage to places beyond India (Haj Pilgrimage).	-do-	-do-
8.	Meteorological Organisations observatories. Floods, Earthquakes, Eclipses, Fire (the Government of India have stated that there is no agency so far as the Department of Education, Health and Lands is concerned, under the subject "Survey of India; Botanical and Zoological Survey".)	-do-	-do-
1	Copywright, Inventions and Designs; trade marks and merchandise marks.	Department of Labour.	-do-
5	Ecclesiastical affairs including European Cemetries.	Defence Department.	-do-
1	Settlement of Disputes between Telegraph and local authorities	Department of Communications.	-do-
1	Arrangements for the confinement of Political Prisoners.	External affairs Department.	-do-
2	Extradition including the surrender of criminals and accused persons parts of His Majesty's Dominions outside India (Extradition of offenders from Europe, British subjects from Portuguese India etc)	-do-	-do-
3	Work in connection with Foreign Consular Officers. Their appointments leaves etc.,	-do-	-do-

The number of the above items is 18, out of which the Government of India have taken 14. Their number 16 includes the following three items which we have included in our claim against the Defence Department for the reasons given in paragraph 7(2)(vii) of our letter of March 1940:

(i) Sanction for the trial of offenders under Section 7 of Explosive Substances Act (item No. 1 under the Home Department of the Government of India with which Home Department of the Bombay Secretariat is concerned.) S.C 23/*

(ii) Scrutiny of matter intercepted by Postal authorities in this Province under Section 25 of the Indian Post Office Act and rule 221 of the In dian Post Office Rules (item No. 2 under Home Department of the Government of India with which Home Depa rtment of the local Secretariat is concerned).

'iii) Censorship of broadcast matter (item 2 under the Department of ~~Commission~~ Communications with which Home Department of the Bombay Sec etariat is concerned).

On the other hand , the overnment of India's No. 16 does not include the following five of our 18 items.-

(1) Registration of foreigneres under the rule 3 of the Registration of Foreigners Rules, 1939, issued under Section 3 of the Registration of Foreigners Act, 1939 (item 12 under Home Department of Government of India with which Political and Services Depa tment is concerned.

(2) (3)Agency functions under the Emigration Act and Rules ~~Inventions and Designs~~ (item 1 under the Department of~~Education~~, (items 1 and 2 under the Department of Education, Health and Lands with whic Political and Services Department is concerned.)

(4) Agency functions under the subjects "Copyright", Inventions and Desigrs" (item 1 under the Department of labour, with which Political and Services Department is concerned).

(5) Ecclesiastical affairs including European Cemetries (item 5 under the Department of Labour, with which Political and Services Department is concerned).

We are now told that there is no agency of the Provincial Government under the subject "Copyright, Inventions and Designs", This i em will be omitted and as it gave no work, its omission does not affect our claim of Rs. 42,250. The Government of India are apparently under the impression that the subject "Ecclesistical affairs" has been included by us in our claim Of Rs. 12,700 against the Defence Department. This is not true. This subject which is one of our important (as it gives sufficient work to political and Services Department B and C Branches) agency items has been included in our claim of Rs. 42,250 and should, therefore, help to some extent to remove the impression of the Government of India that our claim is excessive, Moreover, if, as is proposed in the linked case, to withdrew our claim of Rs. 12,700 against the Defence Department, it will be necessary to include in our claim of Rs. 42,250, the thre e items (Nos 1 and 2 under the Home

Department of the Government of India and No. 2 under the Department of Communications, with all three of which our Home Department (political) is concerned) which, as already stated above, are included in our claim against the Defence Department and not in the general claim of Rs. 42,250 and since the agency under the subject "Emigration" and "Assisted Repatriation "(items 1 & 2 under the Department of Education, Health and Lands, with which Political and Services Department is concerned) has not been withdrawn but is being entrusted from year to year, there appears no reason why the Government of India should have omitted these items from the number of 16 items referred to in paragraph 4 of their letter. Actually, therefore, we are in a position to include 20 items against the 16 items mentioned by the Government of India, the additional four which the Government of India have not taken into account being important should dissipate any impression that our claim of Rs. 42,250 is in any way excessive.

7. Our claim of Rs. 42,250 relates to those agency functions only with which Political and Services Department alone is concerned. It covers as many as 18 (now 17) items many of which give appreciable agency work to this Department e.g. Emigration, Haj Pilgrimage, Ecclesiastical affairs, Naturalization, Registration of foreigners, Extradition and so on. Recently in connection with the proposal of the Government of India to withdraw the agency in respect of Emigration and Repatriation, the agency cost in respect of this one item was assessed at Rs. 15,000 per annum (inclusive of overhead charges and percentage leave and pension contribution). The agency cost in respect of the subject "Ecclesiastical affairs" has been roughly assessed at Rs. 3600 exclusive of overhead charges and leave and pension contribution. It is quite likely that if the cost of each of the chargeable agency items were have been more assessed singly, amount of our total claim would have been more than the amount actually demanded. This was not done for the reasons stated in paragraphs 5 and 8 of our letter of March 1940. Apparently the

the Government of India are not satisfied with the manner in which we approached the subject. The Government of India seem to demand that our claim whould be assessed item by item, although we made it abundantly & clear that any such computation was not likely to yield more accurate rwsults, results having regare d to the fact that the work is distributed amont a number of men doing both kinds of work - Provincial and Agency. It may be conceded that if each item were assessed singly, it would b e easier to tackle thm previem the problem every time an item is removed or added to the list of agency items included in our claim for cost. But this method is not going t- yield more accurate result since not only will the claim still be an an approximate basis, but the eleme t of approximate compute-tion will attach to each ite- instead of, as at present, to the lot of them taken together. There is every reason to hold, therefore, that our claim of Rs. 42,250 is not unfavour-able to the Government of India who have, with-ut proposing a,y alterative method or giving any cogent reasons, characteris-ed our claim as "excessive". We are not only x in a position to defend it, but having regard to the facts that the Government of India are under the erroneous impression that the agency cost in respect of the subject "Ecclesiastical affairs" is not included in the amount of Rs. 42,250 and that they have not taken into account the agency cost in respect of the subjects "Emigration and Repatriation" we can even press for it. However, wes may include the three items pertaining to the Home Depart-ment (Political) . Nos. 1 and2 under the Home Department of of the Government of India and No. 2 under the Depastment of Communications - which we included in our claim against the Defence Department in our general claim without adding anything to the sum of Rs. 42,250. assuming that the Home epartment (Political) has no objection to its three items being merged in the general claim without asking for any extra payment on its behalf,on that account.

S.C. 23/5

8. The alternative would be to assess each of the 20 agency items (17 items of Political and Services Department and 3 of Home Department (Political) and after adding up the frictions, to fix a revised fighre of our claim against the Government of India. The amount so fixed may be more or even less than the amount under dispute. Such a computation will necessarily require time, since it will be necessary to ascertain the volume of work under each of the items ~~x~~ for a specified period-say six months from a date to be named - and also the time and energy spent on it from day to day by the staff and officers. If such a cumbrous method is to be adopted we may inform the Government of India accordingly and ask them for the ontinuance of payment on the existing provisional basis, as heretofore. F.D. may advise.

Id/-C.K.M.
1-10-41

It will ave time and simplify the preparation of this case if the departments concerne concentrate on and deal with the items with which they are concerned separately and simultaneously.

2. The remarks in the Government of India's letter require to be carefully examined. Before we modify our view in respect of any of the items included in the st tement appended to our letter No. 1809/34 dated the 16th March 1940, we must be quite clear as to whether (1) ther is any entrustment of functions of the Central Government ~~x~~ to the Provincial Goverh-ment in respect of an exclusively federal subject (or a concurrent subject?) under an agency arrangement, -- statutory or non-statutory, express or implied (2) if so, whether our claim is justified and whether the entry in our statement should stand or be modified. Reasons should be stated in support of the view taken in respect of each item.

3. The Government of India 's remarks against item No. 3 under Commerce Department would seem to suggest that since in the case of a concurrent subject, the executive authority of the Provincial Government extends to the administration of the subject, there is no agency and no claim for compensation can, therefore, be admitted. This contention requires to be examined and the opinion of the R.L.A. should be obtained, if necessary. Under section 129(1) of the Government of India Act, 1935, agency functions can be entrusted "in relation to any matter to which the executive authority of the Federation extends" Under section 8(1)(a), the executive authority of the Federation extends to the matters with respect to which the Federal legislature has power to make laws and under Section 100*2*, the federal Legislature has power to make laws with respect to concurrent subjects. It follows, therefor , that there can be entrustment of agency functions in respect of concurrent subjects and this view has, it is believed, been confirmed by the R.L.A. (Mr. Rajadhyaksha). I agree, however, that i the case of concurrent subjects, the function of the Federal Government is restricted to the making of laws only, with a view to uniformity of legislation over the whole of [illegible] India, and that the actual administration of the Act is conducted by the Provincial Government. The point, therefore, arises whether the Central Government actually entrusted a any agency functions to the Provincial Government and whether there is, in actual fact, an agency i.e. any work done on behalf of the Central Govt. which, but for the agency, would have to be done by the Central Government itself.

4. As regards the method of assessment of the amount of compensation, I think we shall have to adhere to the view already taken.

5. Copies of the Government of India's letter and its accompaniments and of these notes w should be sent to all Departments.

S.C.

Department, with reference to our letter of 16th March 1940, with a request (1) to examine the suggestions of the Government of India, with which they are respectively concerned (2) to state whether they should be accepted or not and whether in each case an agency exists or not, stating reasons and (3) whether the statement appended to our letter of 16th March 1940 should be modified, and if so, what modifications should be made, The items accepted by the Government of India need not be dealt with and the entries shouldbe dealt with in the order given in the statement appended to Government of India's letter. It will simplify the disposal of this case if the information is supplied by the departments in a prescribed form and a form as indicated in the margin might be sent to them with our memorandum.

I appended to the memorandum.

Id/-V.H.V (ashhrajani)
9/10

S.C. 23/5

10203
4/11

Submitted with p.p.

2. These papers relate to the contribution from Central revenues for --- agency functions performed in the Bombay Secretariat on behalf of the various Civil Departments of the Government of Indi

3. This Department is concerned with items Nos. 17 and 18 under F.D. and item No. 1 under Legislative Dept.

4. Item No. 17 related to the legal advice to the Central Govt. by the law officers of the Provincial Government and the Govt. of India have agreed to the payment of Rs. 12,000 annually to the Provincial Government.

5. Item No. 18 deals with the defence and conduct of legal proceedings on behalf of the Central Government. The Govt. of India was informed that the Provincial Government is agreeable to continue the agency subject to the condition that charges incurred in the actual conduct of legal proceedings (fees of counsel, Court, fees, etc.) are to be borne by the Department of the Cent: Government which institutes or defends the legal proceedings.

6. Item No. 1 under Legislative Deptt deals with the Elections to the Federal Legislature, subject to the provisions of the Govt. of India Act, 1935, and of any Order-in-Council thereunder.

7. The P. & S. Deptt. has now forwarded a copy of the reply received from the Govt. of India F.D. with a copy of that Deptt.'s note and requests the

Depts.

(1) to examine the suggestions of the Government of India with which they are respectively concerned..

(2) to state whether they should be accepted or not and, whether in each case an agency exists or not, stating reasons; and

(3) whether the consolidated statement appended to this Government, Political and Services Department, letter to the Government of India, Home Department, No. 1809/34-A, dated the 5th/16th March 1940 shouldbe modified and if so, what modifications should be made.

That Deptt. also wants that information may be supplied in the form appended to that Deptt. Memorandum under reference

8. Attention is invited to para. 3 of the G. of I.,F.D. No. 3598-F/41, dated the 1st ~~x~~ July 1941, where that Deptt. has classified the dirrerent items referred to in the letter of the P.& S.D. to the Govt. of India, Home Deptt.

9. The items pertaining to this Dept. viz. Nos. 17 and 18 under H.D. and item No. 1 under legislative Deptt. have been classed by the G. of I., F.D. as functions in respect of which separate arangements for payment exist (see p. // ante) and as such ~~x~~ so far as these items are concerned, the P.& S.D. may be informed that as they have been classed as functions in respect of which separate arrangements for payments exist, this Deptt. has no remarks to offer in regard to those items.

10. B Branch may however see the changes proposed by the Govt. of India in item 1

S.C. 23/5

that Branch is concerned, and also see the note of the P. & S.D' in that connection.

Sd/ 14-11

The Government of India propose certain changes in the Statement of Agency Functions forwarded with the P. & s. Deptt. letter No. 1809/34-A dated the 15/16th March 1940, and request to be informed of the concurrence or comments of the Govt. of Bombay thereon.

2. The L.D. is concerned with the following items of the consolidated statements of

Home Deptt. (non-statutory)

(1) Item 17 - Legal advice to the Central Govt. by the Law Officers of the Provincial Govt.

(2) Item 18 ---- Defence and conduct of Legal Proceedings on behalf of the Central Government.

Legislative (statutory)

(3) Item 1 ---- Elections to the Federal Legislature, subject to the Government of India Act, 1935, and of any Order in Council thereunder.

3. The only change proposed by the Govt. of India is in relation to (3) above The change proposed is that "bye-elections" should be substituted by "elections and bye-elections"; and L.D. letter No. 4351 dated 2nd May 1940 is cited as an authority. This may perhaps be accepted.

4. The other modificationsmx suggested do not affect the L.D. and the L.D. has also no modifications to suggest in

relation to the other two items.

5. The P.& S. Deptt. may therefore be informed with reference to its Memo. No. 1809/34-I dated 31st October 1941 that the codification suggested by the Govt. of India to item No. 1 & under Legislative Department, may be accepted, and that the L.D. has no modifications statement to suggest to the consolidated statement appended to the P. & S. Deptt. letter to the Govt. of India, Home Department, No. 1809/34-A, dated the 5/16th March 1940.

S./-17-11

Submitted

As regards the modification proposed at p. 9 ante in item No. 1 under Legislative Deptt. it may be stated that the proposed modification or is in order except that the date referred to in the last column should be 2nd May 1940 instead f 22nd May 1941. 2. Perhaps the opportunity may be taken to substitute the following remarks for the remarks made in column 6, to state the present position, namely .-

"the Provincial Government has accepted the agency function in respect of preparation of electoral rolls and conduct of by-elections and general elections to the Indian Legislative Assembly and Council of State under the Legislative Assembly and Council of State Electoral Rules - vide Legal Deptt. letter No. 4351 dated 2nd May 1940.

The Govt. of India has agreed to pay to the Provincial Govt. a sum of Rs. 200 for every under uncontested by-election - vide Govt. of

India, Legislative Deptt. letter No. 207/40 C & G dated 13th July 1940

As regards the question of cost on account of contested by election, preparation of electoral rolls or general elections no specific agreement has (yet) been arrived at as yet.

Sd.
24-11

S.S.
24.11

S.A.S. I agree with ~~the~~ Mr. Dhotre's note Reply will have to be sent - in terms of his note in the from at p. 3 ante.

S.D. ;-;2

SD/ 3.12.41

a. L.R.

D.S. Sd/- 3/12

No. 10494

Legal Department

Bombay Castle, 6th December 1941.

MEMORANDUM.

The undersigned presents compliments to the Hon Chief Secretary to the Government of Bombay, Political and Services Department, and with reference to that Department endorsement No. 1809/34-A, dated the 31st October 1941, is directed to state that this Department is concerned with the following items of the consolidated statement showing Agency functions performed by the Government of Bombay, received with the Political and Services Department letter No. 1809/34-A, dated the 5th March 1940.-

Home Department (non-statutory).

(1) Item 17 --- Legal Advice to the Central Government by the Law Officer of the Provincial Government.

(2) Item 18 --- Defence and conduct of Legal proceedi on behalf of the Central Government.

Legislative Department (statutory).

(3) Item 1. --- Elections to the Federal Legislature, subject to the provisions of the Govt. of India Act, 1935, and of any Order in Council thereunder.

2. The only change proposed by the Government of India is in relation to (3) above. The change proposed is that "bye-elections" should be substituted by "elections and bye-elections". The proposal modification is in order except that the date x referred to in the last colucn should be 2nd May 1940 instead of 2nd May 1941. It is, however, suggested that in order to state the present position clearly this opper tunity may be taken to substitute the remarks as shown in the last column of the form accompanying this memorandum in place o the remarks incolumn 6 of the consolidated statement appended

to the Political and Services Department letter of 5th March 1940.

By order of the Governor of Bombay.

O.C.

For Secretary to the Government of Bombay
Legal Department.

To

The Chief Secretary to the Government of Bombay,

Political and Services Department.

R.L.A.

Submitted for approval
signature.

Sd/ 5.12

Issued
5.12

S.S. 5.12

S.C. 4 C. 25/5

4/6

4/6.